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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,285	03/18/2004	Thomas Chupak	DB000982-004	5640

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THORP REED & ARMSTRONG, LLP
ONE OXFORD CENTRE
301 GRANT STREET, 14TH FLOOR
PITTSBURGH, PA 15219-1425

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/803,285

Applicant(s)

CHUPAK, THOMAS

Examiner

Stephen J. Castellano

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/18/04; 8/2/04</u> | 6) <input type="checkbox"/> Other: ____ |

Art Unit: 3781

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is indefinite because it contradicts claim 1 because claim 1 states a one-piece can and claim 10 adds a threaded plastic insert making the can at least two pieces. Claim 21 is similarly indefinite with respect to the one piece can claimed in claim 12 from which it depends.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-15, 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Diekhoff et al. (Diekhoff) (6010026).

Diekhoff discloses a one-piece aluminum (series 3000 aluminum) can (see Fig. 28) with threaded neck finish, tapered shoulder, cylindrical sidewall, domed bottom free of wrinkles and the area of U-shaped profile at the periphery of the bottom. The initial thickness of 0.51 mm is an intermediate step in the process of forming the final product would not dictate either a final wall thickness equal to 0.51 mm, a wall thickness thinner or a wall thickness thicker. This limitation doesn't have any structural effect on the final formed can. Also, the brushed limitation doesn't have any structural effect on the final formed can. The dimensions recited within claim 18 are within the ranges given in Diekhoff.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diekhoff.

Re claim 1 and 22, Diekhoff discloses the invention except for the thickness sufficient to withstand 270 psi. Well known engineering principles indicate that larger wall thicknesses provide the capability to withstand larger internal pressures than smaller thicknesses within pressure vessels. It would have been obvious to increase a vessel's internal pressure capability by increasing wall thickness in order to allow the beverage package to withstand harsher treatment and therefore higher pressure without rupture or failure.

Re claim 5 and 16, Diekhoff teaches varying wall thickness in the embodiment of Fig. 30 with bottom area 95 in the range of 0.010 – 0.015 inch, lower vertical sidewall 93 in the range of 0.0045 – 0.0065 inch and upper sidewall 92 in the 0.0065 – 0.0085 inch range. The thickness ratio of bottom area 95 to lower sidewall area 93 is in the range of 2-3. The present invention's thickness ratio of bottom area (0.51 mm) to sidewall area (0.21 mm) is between 2-3. The sidewall thickness of 0.21 mm (0.00826 inch) is within the range given for the upper sidewall 92 of Diekhoff (0.0065 – 0.0085 inch). It is logical to assume that if one of ordinary skill in the beverage can art desired to increase pressure capacity that he would increase the thicknesses of the Diekhoff Fig. 30 can such that the ratio of bottom to sidewall thicknesses would be the same since in general the bottom thickness should be 2-3 times greater than the sidewall thickness. It

Art Unit: 3781


would have been obvious to modify the vertical wall thickness of the lower vertical wall 93 to be approximately 0.21 mm and to modify the bottom portion wall thickness (area 95) to be approximately 0.51 mm as a matter of design choice in selecting dimensions within the acceptable range when one of ordinary skill is increasing wall thickness for the purpose of allowing the beverage package to withstand harsher treatment and therefore higher pressure without rupture or failure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3781

sjc